ZUFFRE HJ ZAKARIA

v.

NURAZMI HJ LAYEH

HIGH COURT BRUNEI DARUSSALAM
DENYS ROBERTS CJ
[CIVIL SUIT NO: 84 OF 1996]
20 MAY 1998

TORT: *Assault - Assault by servant in course of employment - Whether police officer had abused his authority*

TORT: *Damages - Exemplary damages - Circumstances in which to award - Whether exemplary damages ought not to be ordered where assailant provoked by victim*

This was an action against a police officer for alleged unlawful use of force. According to the plaintiff, he was sitting in the back seat of the car with a lady when he was approached by the defendant who inquired what he was doing. The plaintiff alleged that the defendant, without showing any identification, claimed to be a policeman. As the defendant was in plain clothes, the plaintiff did not believe that he was a policeman. Fearing for his safety, the plaintiff started the car and attempted to drive off. The defendant jumped into the car and a struggle ensued while the car was being driven by the plaintiff. Eventually, the car came to a halt when it collided against a post. The plaintiff claimed that the defendant assaulted him in the car and outside the car after it had come to a halt. The plaintiff alleged that the defendant was activated by malice and had abused his authority. He further alleged that he was subjected to ridicule and as a result, the injuries to the plaintiff had been aggravated. Thus, the plaintiff sought general damages, special damages and aggravated or exemplary damages.

The defendant, on the other hand, denied assaulting the plaintiff by claiming that he could not have done so as he was gripping the steering wheel while the car was moving. He alleged that the injuries suffered by the plaintiff, if any, was caused or contributed by the plaintiff's own fault in driving the car while a struggle was in progress. The defendant added that he was only using such force as was reasonable to restrain the plaintiff. The defendant further alleged that he had sufficiently introduced himself as a police officer by showing his warrant card. He stated that he had asked the plaintiff and the lady to come out of the car but they refused to do so. Further, according to the defendant, the plaintiff refused to stop the car despite being ordered to do so.

Held:

[1] As a police officer, it was the defendant's duty to investigate crime. He had informed the occupants of the car that he was from the police and had produced his warrant card, even if it was not seen by either occupants. He had also asked them to get out of the car as he was suspicious that an offence had been committed. When the plaintiff attempted to drive off, the defendant jumped into the car with the intention of arresting the plaintiff. Up to this point, the defendant had acted within the scope of the powers conferred on him as a police officer to investigate suspected crime.

[2] As to how the plaintiff sustained the injuries, the court prefers the version of events as alleged by the plaintiff, that is to say he was assaulted by the defendant. The physical assault which the defendant carried out on the plaintiff was not justified as a reasonable use of force in the circumstances. The defendant was probably annoyed that the plaintiff did not stop the car and that is why he had punched him.

[3] Exemplary damages could be awarded in certain circumstances including situations which involved oppressive, arbitrary or unconstitutional acts by government servants. There is a general right of the courts to award aggravated damages if there are circumstances which could properly be called aggravating.

[4] On the facts of the case, although the defendant did act in a manner which might otherwise have attracted exemplary damages, the degree of provocation which he received did not warrant such an order. The plaintiff would be entitled only to general and special damages.

[Judgment for the plaintiff.]

Case(s) referred to:
Hon Ming Sung v. Tan Kwong Hui [1994] JCBD 164 ***(refd)***
Inon Bidun v. Koh Seng Song [1986] (Singapore) ***(refd)***
Lim Bee Keow v. Soh Choon Seng [1993] (Singapore) ***(refd)***
O'Connor v. Hewitson [1979] Crim LR 46 ***(foll)***
Rookes v. Barnard AC 1129 ***(refd)***
Than Ting v. Riduan Sadi [1992] (Singapore) ***(refd)***

Legislation referred to:
Penal Code [Brunei], s. 320

For the plaintiff - YC Lee
For the defendant - Rudi Lee

Reported by Mariette Peters-Goh

JUDGMENT

Denys Roberts CJ:

Preliminary

The Pleadings

This is an action against a police officer, on duty at the material time, alleging an unlawful use of force.

In his statement of claim, dated 12 July, Zuffre bin Haji Zakaria ("the plaintiff' or "Zuffre") says that he was employed by the Brunei Government as a driver and that PC2783 Nurazmi bin Haji Layeh ("the defendant" or "Nurazmi") was a police officer.

On 5 March 1996 at about 11.30pm the plaintiff was sitting in the back seat of BG7542 with Majenah Ak Madak ("Majenah"), a lady friend, when the defendant appeared and asked the plaintiff what he was doing in the back of the car. The defendant claimed to be a police officer.

The plaintiff did not believe him and moved to the driver's seat, with the intention of driving off to a nearby restaurant to meet some of his friends there. The defendant, without identifying himself properly, jumped into the front seat and demanded that the plaintiff should stop the car.

The defendant then punched the plaintiff in the face, as a result of which the plaintiff lost control of the car. This hit a post, bringing the car to a halt. The defendant came out of the car, dragged the plaintiff out of the driver's seat and started to kick him.

As a result, the plaintiff suffered loss and damage. Particulars of his injuries are set out. The treatment carried out in Ripas concerned only Zuffre's cheek and eye. As special damage, the plaintiff also claims the value of the t-shirt which he was wearing at the time, which is valued at B$30.

It is also said that the defendant was activated by malice towards the plaintiff and abused his authority, subjected him to ridicule, as a result of which the injuries to the plaintiff have been aggravated. The plaintiff therefore claims aggravated damages. This was amended, during the trial, to "aggravated or exemplary damages".

A defence was filed, dated 25 March 1997. The defendant admits that he was in the back seat of BG7542, as alleged, save that the plaintiff and his lady friend were embracing at the time. He approached the car with the suspicion that the car had been broken into, as the back left-hand side window was open, and that it might have been stolen.

When he approached the car, he identified himself as a police officer and produced his warrant card. The plaintiff moved suddenly to the front seat of the car and tried to drive off.

The defendant says that, in pursuance of his duty to investigate a suspected crime, he got into the front seat and attempted to recover the keys. A struggle ensued but the plaintiff managed to drive the car for some distance until the left passenger door hit a post and the car stopped abruptly.

The defendant denies kicking or hitting the plaintiff as alleged. If there was any injury to the plaintiff, this was due to the self accident of the car and not to any action of the defendant.

The defendant does not admit any of the claims for special damages or damage. The defendant further alleges that, if there were any injuries suffered by the plaintiff, they were caused by or contributed to by the plaintiffs own fault in driving the car while there was a struggle in progress, when the defendant was carrying out his duty as a police officer. He adds that he was only using such force as was reasonable to restrain the plaintiff.

The Evidence Of The Witnesses

I have attempted to summarise their evidence below. This does not purport to be exhaustive and evidence which is not so summarised may be taken into account in my findings.

PW1 Zuffre bin Hj Zakaria is the plaintiff in the action. He joined the Brunei government ("BG") in 1993 and is a driver.

On the evening of 4 March 1996 he was in the Gadong area, where he had arranged to have dinner with three other BG drivers in a restaurant there.

He met a young woman named Majenah Ak Madak. He borrowed the key to BG7542, a Mercedes. This car was parked behind the Hasbollah Building.

He unlocked the car and entered it with Majenah, sitting with her on the back seat. After they had been there 10-15 minutes, a man with casual clothes and long hair approached the car.

This man called "What are you doing here?" The witness replied "Who are you?" The man replied "police".

Zuffre did not believe him, as the man did not show him any warrant card. He was terrified and worried about the safety of himself and Majenah, so he went to the front seat, started the engine and tried to get away.

He was thinking of getting some help from his friends in the restaurant. When he tried to get away, the man entered the front left side of the car. [The man turned out to be Nurazmi, which is not disputed].

Nurazmi did not ask him for his name, or for his I/C, or where he lived or worked or tell him that he was being arrested.

As Zuffre drove away, Nurazmi entered the car and punched him on the left side of the face, with Nurazmi's right hand. Zuffre was holding the steering wheel, when Nurazmi punched him just below the left eye.

Nurazmi kept on hitting him, but he tried to steer the car. He could not fight back, as he was controlling the car. Nurazmi hit him four or five times. Nurazmi grabbed hold of the steering wheel and the car swerved to the right off the road and hit a sign post. The car had then travelled 100-200 metres, though he was not sure of the distance. The car was parked behind the shophouses. He drove it round them onto the main road.

When the car stopped, Nurazmi pulled him out of the car and kicked him and he fell.

Then a white van arrived. One of those who came from it asked him "Why did you run away?" Zuffre asked for a warrant card. The man produced one. He was not in uniform. Zuffre was asked to get inside the van and taken to BSB CPS and then to Ripas. Here he was put on a stretcher and lost consciousness. He stayed in Ripas for about two weeks. He had an operation there about two days after he was admitted to Ripas. He lodged a complaint (PB45) about two days after he left the hospital.

At the time of the incident he was wearing a white t-shirt (P2). (The value of which was agreed by both counsel as B$30).

When Nurazmi dragged him out of the car, Nurazmi kicked him once on the back.

When he was taken to the police station, his face was bleeding and the left side of his face was swollen and hurt him. His vision was blurred in his left eye.

The ignition key of the car was situated on the left side of the steering wheel. The defendant did not try to remove it.

When cross-examined, Zuffre agreed that there was street lighting at the place where the car was parked, though it was not very bright.

He did not see anyone else with Nurazmi. The defendant said he was police. Nurazmi did not show him any warrant card, though the witness did not ask for it. Before Zuffre moved to the front, Nurazmi had time to show his warrant card, though not to ask him who he was and where he lived.

He did not get out of the car but climbed over the middle to get to the front seat. He drove off a very short time after he got to the front seat and did not have time to put on his safety belt.

As soon as he started the engine, Nurazmi got in. Nurazmi was sitting in the car. His legs were not dangling out of the car and his door was shut. Nurazmi punched him with his right hand.

Zuffre was driving fast when the car hit a sign post on the left front door and stopped. He did not hit the steering wheel when the car stopped. He was holding it firmly. He was not hurt when the car stopped.

He was kicked on the right side of his upper back, near the shoulder. He was standing when he was kicked and fell over on the slope.

He drank some whisky at home that evening about 9.15pm and reached Gadong about 11pm.

In re-examination, he admitted that he moved to the front seat straight away, when Nurazmi said he was a police officer.

He drove off the road before he hit the post. He did not brake. The impact was on the left front side, where the defendant got in. When Nurazmi said "we're police", he was very close to the window of the car.

He met Majenah by chance. He wanted to take her to the back seat to have a talk. He did not kiss her or hold her hand or anything like that, though he knew her quite well before.

When he got into the car he wound down the window on the left side. He thought Nurazmi was a thief or someone who wanted to beat him up.

Zuffre produced the t-shirt he was wearing on 4 March 1996. It had a boot mark on the back near the shoulder. He got this when he was kicked from behind on the back by Nurazmi. There were some stains on the t-shirt, where he fell over. There is a print from the left foot on the t-shirt.

He was not too tall for Nurazmi to kick him. It was a high kick. None of the injuries treated in Ripas were caused by the kick. All were due to the punching.

PW2 Majenah Ak Madah is now nearly 21. She remembered the incident in the Mercedes. She knew Zuffre before that, but not for very long.

Zuffre invited her into the back seat of a Mercedes. They were just talking.

They were sitting on the back seat. He was on her left.

A man approached the car. She only saw one man, who said he was from the police. He added "Is there anybody else inside the car?"

Zuffre replied that he was waiting for a friend. Then Zuffre went suddenly to the front. The man did not say anything else or produce a warrant card.

As soon as Zuffre went to the front of the car, the man opened the left front door. When the car drove off, they were both holding the steering wheel. Before the accident they were both struggling.

The man tried to pull Zuffre from the steering wheel. The man shouted to Zuffre to stop the car. When the car hit something and stopped, she ran away. When she looked back, she saw the man hit Zuffre with a hand, though she could not see where the man hit Zuffre.

They were struggling for about two minutes in the car. The man shouted twice to Zuffre to stop the car. He did not say anything else.

She repeated that the man who got into the car put his whole body inside it and his door was shut. She did not see the man try to shift the gears or snatch the key.

Both of them grabbed the steering wheel when they were struggling. The man was leaning towards Zuffre as he did so. Their bodies were touching.

The struggle for the steering wheel went on for about two minutes. The car went up a slope and stopped.

She saw Zuffre hit by Nurazmi outside the car. She is not sure if the same thing happened inside it.

When the man first approached the car, she thought he was a bad man because he was wearing casual clothes and spoke rudely.

In cross-examination, she denied that she was kissing or hugging Zuffre, just before the defendant arrived.

The defendant was alone. She would have noticed if anyone had been with him. When the defendant came to the car, she was not sure if he came from the police as she was frightened. He did not show them any warrant card.

She did not see all that happened in the car. She was terrified. She looked outside. She wanted to get out of the car.

When she looked back, after getting out of the car, she was 20 metres away and saw the defendant hit Zuffre. She was not sure where he hit Zuffre.

She did not hear the defendant say "don't run" at any time, but heard him say "stop the car".

PW3 Zakaria Hj Metussin is the father of the plaintiff.

At about 0300 on 5 March 1996, he was called to RIPAS and saw Zuffre there. Zuffre told him that he had been beaten up by the police.

Zuffre later handed to him a t-shirt (P2) to take home. Zuffre told him he had been kicked by the police. The shirt was given to him two or three days after the incident. The shoe mark was already on the T-shirt when this was given to him.

The plaintiff also tendered a medical report by Dr Cheng, who is no longer in Brunei. The report records that Zuffre was admitted to RIPAS on 5 March 1996 and discharged on 14 March 1996. It goes on

> History of alleged road traffic accident/assault. Sustained fracture floor of left orbit and fracture inferior rim left orbit. Other injuries include scratch wound right cheek, abrasion lower left eye lid and subconjunctival haemorrhage left eye. A reconstruction of the floor and interior rim of the left orbit was done on 7/3/96 with iliac crest bone graft. Post-operative was unremarkable and patient recovered fully.

DW1 S/I PG Zaidi bin PG Hj Metali ("Zaidi").

A group of CID officers, under DSP Azahari, went to Gadong, about 2345 on 4 March 1996 to check on the Palm Beach Restaurant.

While he was upstairs, on the raided premises, one of the CID officers told him that there had been an incident between Nurazmi and a man whom he had tried to stop.

He went downstairs and asked Nurazmi what had happened. Nurazmi told him that he saw a car parked at the back of the building, with a window open. He saw a man and a woman sitting at the back of the car. He introduced himself to the man as a police officer. The man immediately jumped to the front seat and started the car engine.

Nurazmi told him that he got inside the car, though half of his body was outside it. The man drove off at high speed and hit a sign board in front of the building.

Zaidi later saw the driver and asked him why he ran away. He said that he was terrified. The driver denied that he was drunk but admitted that he had had some drink that evening.

DW2 DSP Azahari bin Besar ("Azahari") was in charge of the raid at Gadong on 4 March 1996.

He ordered Nurazmi and Robert (DW3) to go behind the building. Later, Robert returned and told him that they had seen a car behind the building which looked suspicious. There were people inside the car. He told them both to carry out an investigation.

Later he heard a screeching of tyres and went to the passageway running between the buildings to see what had happened. There Robert told him that Nurazmi had been carried away with half of his body hanging out of the car.

In cross-examination, he said that no complaints had been made before about PC Nurazmi and he did not know that any complaint had been made against him for what he did that evening.

He told Nurazmi and Robert to make a report to the CPS about the incident. He did not see the report. He was not contacted by any police officer about an investigation.

DW3 PC Robert Rangua AK Ujan ("Robert")

He was on duty on the evening of 4 March 1996. He was part of the ambush of a suspected karaoke and liquor place.

After the raid, he and Nurazmi saw a car with the window down. So they reported to DSP Azahari, who told them to check the car.

They approached the car. He was not far behind Nurazmi. He saw two heads inside the car. Nurazmi showed his warrant card and said "We're police". The man in the car said nothing. When Nurazmi asked him what he was doing there, he said "I am waiting for a friend". Then Nurazmi asked the two persons to get out of the car. They did not. The engine started.

Nurazmi opened the left side door. He saw Nurazmi's body dangling from the car. He chased it but did not catch it. So he went back and reported to his superiors.

In cross-examination, he said that he was suspicious of the Mercedes, with the rear window down, as he thought it had been stolen. It was unusual for a BG car to be parked in that area at night.

He went to see DSP Azahari to ask him what they should do.

He and Nurazmi approached the car from behind. Nurazmi showed the occupants his warrant card, though he is not sure if they had a good look at it. When Nurazmi showed them his card, he was right behind him on his right side.

Nurazmi said "we're police". And then "what are you doing here?" The man replied "I am waiting for a friend". Nurazmi ordered them to get out of the car.

The car engine started. Nurazmi said "don't run away". Then Nurazmi opened the front door of the car and got half his body inside it. He saw this very clearly.

He did not record the incident in his diary. He admitted that it was his duty to enter anything of importance.

A week after the incident, he made a statement to the IO traffic. His statement is at PB14. Most of his statement is the same as the information report which Nurazmi made on 5 March 1996. This is at PB11.

In re-examination, he added that all he said in the report at PB14 is from his own memory, except details of the car number and that it was a man and a woman in the back of it.

He had the information report of Nurazmi at PB11 in front of him when he made the statement at PB14.

DW4 Dr Arumuka Sundurapandi ("the doctor") was a doctor in the accident and emergency section of Ripas on 5 March 1996.

He examined Zuffre, who was brought in by the police at about 0210 on 5 May 1996. Zuffre was walking. When he examined Zuffre, he found a contusion round his left eye, with conjunctional bleeding. There was some small bleeding inside the eye ball covering, called the conjunctiva. There was also a scratch on his cheek.

A fracture was not visible at first, so a series of tests was carried out to discover it. The specialist performed open reduction and constructive surgery. This involved repair of the damaged bone, with a bone graft from the patient's hip.

The injuries could have been caused by the driver hitting the steering wheel or by a direct blow to the eyeball with the fist, using a sizeable amount of force. A sideways blow would cause the injury, if the eye was struck by a knuckle.

In cross-examination, the doctor said that there were two fractures of the same bone, followed by a bone graft. There was reconstruction and grafting.

If a car stops sharply, you can hit the steering in such a way as to cause these injuries, though generally there is an injury to the forehead.

There was a small bruise over the rib cage on the right, according to Dr Koks report on 12 September 1997. This bruising could probably be due to the road traffic accident.

DW5 PC Nurazmi Bin Layeh the defendant was part of a CID raid at Hasbullah Building, Gadong, on 4 March 1996.

After the raid, Robert saw a car, in which he said the glass seemed to be broken. They reported to Azahari, who told them to carry out an investigation.

They approached the car from the rear, on the left, where they thought the glass was broken. Inside the car a man and woman were kissing.

He took out his warrant card and said "We are police. What are you doing here?" The man in the car said "I am waiting for a friend".

He asked them to get out of the car, as he wanted to check the car and find out who they were. The man jumped into the front seat and started the engine.

On seeing this, he said "don't run" and opened the front passenger door to arrest him. When Nurazmi was half inside the car, it drove away. He managed to grip the steering wheel with his right hand. His legs were still outside the car.

While the car was moving, Nurazmi asked the driver to stop but the car went on until it stopped in front of the Hasbollah Building.

He got out of the car, pulled out the driver and arrested him. He handed him over to other CID officers who arrived.

The car mounted a slope and stopped there. It may have hit something but he cannot remember what this was.

When Zuffre got out of the car, Nurazmi did not see any injuries on his face. He pulled Zuffre out of the car and armlocked him from behind.

When Zuffre jumped into the front seat, Nurazmi thought Zuffre must have committed a criminal offence and was trying to run away.

Nurazmi did not hit Zuffre. He did not know how Zuffre got his injuries. Perhaps it was from a knock on the steering wheel.

He did not punch Zuffre in the car. He did not kick him when the car came to a stop. The footprint on the back of Zuffre's t-shirt is not a footprint of his shoe.

In cross-examination he said that the couple were kissing lying down when he first approached the car. He told them they were police and showed them his warrant card.

He did not remember if he told Zaidi that the two were lying down, or that they were kissing. He did not mention kissing in his information report. He did not have to record this as it is not a criminal offence.

After he told those in the car that they were police, he (Nurazmi) said "what are you doing here?" The man replied "I am waiting for a friend".

He said "get out of the car, I want to check". It is the practice to make people get out of a car if the police wanted their particulars.

There was also the suspicion that they were guilty of a criminal offence. They thought a window had been broken in the car as it was wound down. They suspected the car of being stolen. It was a BG car, parked in a dark area.

When the man did not comply with his orders, he did not become angry. Nurazmi did not understand why Zuffre tried to get away. Nurazmi thought he was a thief when he tried to do so.

As Zuffre tried to drive off, Nurazmi got most of his body inside the car. He stayed like this until it stopped. It hit something. He grabbed the steering wheel when he got into the car. His right hand never left the steering wheel. He tried to hang on to something with his left hand.

He could not have punched Zuffre even if he had wanted to. When the car stopped, he did not see Zuffre's face hit the steering wheel. The car went round two 90 degree corners. So he could have been pulled backwards and forwards.

Nurazmi did not hit Zuffre inside the car. While he was holding onto the steering wheel, he did not tell Zuffre that he was under arrest. He thought that he (Nurazmi) was in danger and would be thrown out of the car if he let go.

He did not know if Zuffre tried to attack him in the car. He did not hit Zuffre with either hand. Nurazmi said that he never got fully into the car, and that his legs were dangling in the road until the car stopped. The front passenger door was probably closed after he got out of the car.

When Nurazmi got out of the car, Zuffre was trying to free himself. So Nurazmi pulled him out and armlocked him. Zuffre did not resist him. He now says that Zuffre did resist him, as was said in para 5.6 of his affidavit.

He suspected Zuffre of committing theft, but did not tell him that he was being arrested for theft.

When Zuffre got out of the car, Nurazmi saw no injuries on him. He did not see Zuffre's face hit the steering wheel. He did not see his fractured bone under the eye.

When he heard of Zuffre's injuries later, he thought Zuffre might have got his injuries from the steering wheel. He denied that he kicked Zuffre.

The accident was due to Zuffre's folly. Nurazmi was only doing what a police officer is required to do. Zuffre's injury is his own fault. He should have apologised to Nurazmi.

Instead of this, Zuffre made a complaint against him and put a false shoe mark on his t-shirt. That is Nurazmi's case against Zuffre. He did not know why Zuffre should make up those complaints against him.

He saw a little blood on Zuffre's face at the CPS. He did not mention this in his report. This was not because he had caused it himself.

If two persons say that they did not see his warrant card, they may not have seen it because the light was dim. Nurazmi certainly showed it to them.

In re-examination, Nurazmi repeated his suspicion that the car window was broken and that the car had been stolen, as it was a quiet place, and the car had a BG plate. He suspected that the person in the back was the thief.

When he was in the front of the car, everything below his waist was hanging out all the way to where it stopped. He felt some pain but he would bear it. When the car stopped, his legs were still outside. The car ran into the mud and stopped.

When he tried to enter the car, he told Zuffre to stop the car. If Nurazmi thinks a suspect is going to make a bolt for it, Nurazmi arrests him.

He could not have hit Zuffre inside the car because he was holding the steering wheel.

Before The Incident

On the evening of 4 March 1996, a raid was conducted on Hasbollah Building in Gadong, it being suspected that illegal karaoke was being conducted on the premises.

During the raid, Azahari ordered two of his party of CID officers carrying out the raid, Robert and Nurazmi, to go behind the building.

Robert returned and told him that there was a car behind the building, containing people. The car looked suspicious. He told them both to carry out an investigation.

According to both Robert and Nurazmi, they approached this car, which was BG7542, a Mercedes Benz car belonging to the Brunei government. It was parked behind the Hasbollah building.

The car had been borrowed by Zuffre from its driver. Zuffre agreed that he was sitting in the back seat with Majenah. Both of them deny that they were hugging and kissing, though Nurazmi said that they were.

The defendants approached the car from the rear. They thought that a window in it had been broken, though in fact it had only been wound down, and suspected that the car had been stolen.

According to Nurazmi, he took out his warrant card and said "We are police. What are you doing here?" To this the man replied "I am waiting for a friend".

Nurazmi asked him to get out of the car, as he wanted to check it and find out who the occupants of it were.

All are agreed that Nurazmi said "we are police". PW1 and PW2 assert that he was by himself and that he did not display his warrant card.

It seems likely that, as the car was parked in a poorly lit parking lot, Zuffre and Majenah may not have seen the warrant card. Also, Robert may well have been behind Nurazmi and partly obscured by him.

According to Nurazmi, he then asked the occupants of the car to get out of it, as he wanted to check the car and find out who they were. This is supported by Robert.

Neither PW1 nor PW2 mention this statement by Nurazmi. I have no doubt that it was made, even if neither PW1 or PW2 now remember it.

I find, as a fact, that -

(a) Nurazmi did inform Zuffre and Majenah that he and Robert were police;

(b) Nurazmi showed his warrant card to the plaintiff;

(c) those in the car did not see the warrant card;

(d) Robert was with but behind Nurazmi at the time;

(e) Nurazmi asked Zuffre to get out of the car.

So far, Nurazmi had acted properly. As a police officer it was his duty to investigate crime. He had referred the matter to a superior, saying that he was suspicious that the car had been stolen, and been instructed to investigate.

He had informed the occupants of the car that he and Robert were from the police and had produced his warrant card, even if it was not seen by either of the occupants. He had also asked them to get out of the car, as he remained suspicious that an offence had been committed.

So far, therefore, Nurazmi had acted within the scope of the powers conferred on him as a police officer to investigate suspected crime.

Reaction Of Zuffre

Zuffre himself admits that he was frightened. This is not surprising, considering the circumstances.

He was not satisfied, he says, that Nurazmi was a police officer, as Nurazmi had said. Nurazmi had long hair and was in plain clothes. He did not see the warrant card. He did not get out of the car when he was asked to do so, a request which might well not have come from a person who intended to steal the car.

I have no doubt that Zuffre panicked. He was not thinking sensibly about what had happened. He only wanted to get away. Without a word to Nurazmi, or to Majenah whom he had brought into the car, he climbed to the front seat of the car and switched on the engine, in an effort to drive away.

When he did so, Nurazmi moved towards the front passenger door to arrest him.

Zuffre had, in my judgment, behaved in an unreasonable way, allowing his panic to take control of his actions.

So far, Nurazmi had behaved in a proper manner, even if it could be said that he was brusque with a suspect and did not address him in a kindly manner, though he had a suspicion that this was a stolen car.

By attempting to get into the front seat of the Mercedes, to prevent it being driven away, Nurazmi was acting properly (and indeed somewhat courageously) in the execution of his duty, which was to arrest persons reasonably suspected of a criminal offence. Zuffre had, by hurrying to the front seat and attempting to drive away, strengthened that suspicion, as he had been informed that Nurazmi and his colleague were police officers.

Struggle In The Car

Nurazmi says (and this I accept) that when he opened the passenger door to arrest Zuffre, he said “don’t run”. When Nurazmi was half inside the car, Zuffre drove it away.

Nurazmi testified that he gripped the steering wheel with his right hand, though his legs were still outside the car. He again asked the driver to stop the car but it continued until it mounted a slope in front of the Hasbollah building and then stopped.

Nurazmi insisted that he remained, until the car stopped, with his right hand gripping the steering wheel and his legs hanging out of the car.

This is an explanation which is difficult to accept, even if it is theoretically possible to hang onto the steering wheel with one hand, while your legs are outside the car, for the whole of a journey of 100 to 200 metres, as the plaintiff estimated it.

Robert gave evidence that, when the car drove off, Nurazmi's legs were still hanging out of the car, though he only saw the start of the latter's journey to where it stopped.

Zuffre insists that Nurazmi had entered the car fully and had closed the passenger door when he took hold of the steering wheel and a struggle between them ensued.

The car turned to the right from the parking lot, then to the left and then to the left again. If the car was travelling at any speed (as all witnesses said) he would surely have been subject to the pull of gravity, one way or the other?

Furthermore, the car was stopped by a post which hit the passenger door. Some damage to this door is shown in the photographs produced. It is difficult to see why Nurazmi's legs were not badly injured, either during the drive or at least when the car come to a halt.

I prefer the version of Zuffre, the driver of the car. It may well be that at the start of the drive, Nurazmi's legs were hanging out of the car, as Robert testifies, but I am satisfied that early in the journey he was able to pull himself wholly inside the car.

Nurazmi would thus have been able to punch the plaintiff, if he so wished. Though the fact that his version of what occurred in the car has been rejected does not mean that he must necessarily have punched Zuffre.

Injuries To Zuffre

On examination in Ripas, where he was on in-patient for nine days, Zuffre was first examined by Dr Cheng, who has left Brunei. He found two fractures in the left orbit, ie of the bone below the left eye, with a scratch wound on the right cheek, an abrasion of the left eye and subconjectival bleeding in the left eye.

The necessary reconstruction and grafting of the fractured left orbit bone was carried out on 7 March 1996.

Dr Sundurapandi ("DW4") examined Zuffre at RIPAS at 0210 on 5 March 1996, when Zuffre was taken there by the police. DW4 found a contusion under Zuffre's left eye, with sub-conjectival bleeding and a scratch on the right cheek.

As the fracture of the orbit was not visible initially, a series of tests was carried out to discover it. The specialist then operated, performing open reduction and constructive surgery, which involved a repair of the damaged bone with a graft with bone taken from Zuffre's hip.

There is thus no doubt that Zuffre did suffer these injuries, which DW4 described as amounting to "grievous hurt". This was not because the injuries threatened Zuffre's life, but because this description attaches, by virtue of s. 320 of the Penal Code, to any fracture of a bone.

How did Zuffre sustain these injuries? Two possibilities were advanced, a punching by Nurazmi in the car or injuries sustained by Zuffre when the car stopped abruptly and he hit his face on the steering wheel.

Dr Cheng expressed no opinion as to the cause of the injuries which he found on Zuffre, DW4 was equivocal. According to him the injuries could have been caused by the traffic accident (ie the driver hitting the steering wheel) or by a direct blow to the eye ball with the fist. A sideways blow would cause them, if the victim was struck by a knuckle.

DW4 agreed that if a car stops sharply, it could cause the injuries he found, though there is generally an injury to the forehead. In this case there was none. He also said that he thought that the bruise found on Zuffre's right rib case could probably be due to the traffic accident.

Zuffre himself is insistent that the injuries were caused by Nurazmi punching him just below the left eye as Zuffre was holding the steering wheel.

He added that, after the car stopped, Nurazmi pulled him out of the car and kicked him once on the back. It is not, however, suggested that this kick caused any injury to Zuffre.

Zuffre says that he did not hit the steering wheel when the car stopped, as he was holding it firmly.

Majenah, although in the car throughout the incident, is of little help in deciding how Zuffre obtained his injuries. She saw Nurazmi and Zuffre struggling in the front and both holding onto the wheel. She heard Nurazmi shout "about twice" to Zuffre to stop the car.

She did not support Nurazmi's evidence, that he never put the whole of his body into the car and that the passenger door remained open. According to her, Nurazmi entered the car, leaned towards Zuffre and grabbed the steering wheel.

She was not hurt when the car stopped. Nor, on his version of events, was Zuffre.

Nurazmi's description of events is different. He is insistent that he never managed to get into the car. Although he grabbed hold of the steering wheel, he was carried by the car for 100-200 metres before it came to an abrupt stop.

Robert said that Nurazmi was carried off by the car with his legs dangling, but only saw the earlier stages of the journey.

Nurazmi added that he was not able to hit Zuffre, because he was holding on to the steering wheel throughout the car's journey with his right hand, which never left the steering wheel.

Nurazmi added that he did not see Zuffre's face hit the steering wheel when the car stopped.

I accept the evidence of Zuffre and Majenah that Nurazmi got into the car fully and that his door closed at some time during the journey, even if it did not do so when first Nurazmi entered the car.

I have no doubt that Nurazmi has now persuaded himself that he could not have punched Zuffre because his right hand never left the steering wheel and his legs were outside the car. Once he admitted that he was fully inside the car, as I find that he was, he would have been able to punch Zuffre.

Furthermore, although the photographs show that the car suffered damage to the passenger door, Nurazmi was not injured, which suggests that this door was shut when the car was halted, probably by an impact with a post, though the evidence as to this is equivocal.

It is also very unlikely that, with three 90 degree changes of direction by the car, Nurazmi would still have remained outside the car if the passenger door had been open all the time.

I have no doubt, therefore, that Nurazmi did enter the car fully, and that he did inflict on Zuffre the injuries suffered by him.

I find, as a fact, that what occurred was that Nurazmi, in an effort to stop a suspect driving off, entered the front seat of the car.

At first, his legs were hanging out of the car but he was able to pull himself wholly into the car by his grip on the steering wheel. The passenger door closed at some stage.

Nurazmi then tried to stop the car, by shouting to the driver to do this, but was not successful. He did not attempt to pull out the ignition key or interfere with the gear lever. Instead, he struck the driver on the face, in an effort to make him comply.

Nurazmi punched Zuffre on the left side of the face, with either his right hand, free from the steering wheel, or his left hand, inflicting the injuries to Zuffre's face which were found.

Zuffre had undoubtedly been unwise, to attempt to drive away in this manner, even if he suspected, at an earlier stage, that Nurazmi was not from the police. If he had been thinking clearly, he would surely have realized, when Nurazmi entered the car and shouted to him to stop, that he probably was a police officer, even if he was in plain clothes.

No doubt, Zuffre was frightened. He was in a BG car, where he had no right to be, with a woman late at night in a dimly lit parking lot.

But does the intransigent conduct of Zuffre justify the resort to violence of a police officer, carrying out his duty? There are, no doubt, occasions on which this is justifiable as a reasonable response, in a situation where such a reaction is unavoidable.

But I do not think the physical assault which Nurazmi carried out on Zuffre was justified as a reasonable use of force in the circumstances. Unfortunately, he has not advanced a story which I have been able to accept.

I believe that he was annoyed that Zuffre did not stop the car and that, in order to make him do so, he punched him.

Damages

This must include an award for pain and suffering and for the severity of the injury, which necessitated a stay of nine days in hospital.

It is not easy to assess the injuries to the eye by reference to similar cases cited in Singapore and Malaysia. Some of these cases are based on a loss or reduction in vision, which has not occurred in this case.

In *Inon Bte Bidun v. Koh Seng Song* [1986] a Singapore Court awarded S$8,000 for a fracture of the medial wall of the bony orbit.

In *Rohani Bte Maveat v. Wan Ismail Bin Wan Talib*, a 1988 Malaysian case, RM5,000 was awarded for an eye injury consisting of multiple lacerations on upper and lower eyelids and a bilateral fracture of the maxilla (the jaw bone).

In *Than Ting v. Riduan bin Sadi* (1992 - Singapore) an award of S$5,000 was made for a fracture of the left orbit.

In *Lim Bee Keow v. Soh Choon Seng* (1993 - Singapore) an award of S$3,000 was made for a "fracture of the orbital floor and displacement".

I have not seen the full reports of any of these cases and have had to follow the summaries given in Malals Digest.

Guided by these cases, and allowing 3% a year for inflation, I award a sum of B$8,000.

I make no separate award for the bruise found on Zuffre's rib cage, which he brought on himself by driving the car away. Nor for the scratch mark, which is a minor matter included in the award of B$8,000 and has not left any permanent scar.

Nor do I add anything for the alleged kicking of Zuffre outside the car. I am not impressed by the production of a t-shirt with the clear imprint of a footprint on it. This was supported by the version of Zuffre that he was kicked by Nurazmi on the shoulder as he was pulled from the car by Nurazmi.

Nurazmi denies that this happened. Majenah does not support it. It is, in any event, most unlikely that a kick could have been delivered so high on the body by Nurazmi; nor that Nurazmi would have used a left foot when he was right handed; nor that such a clear imprint would have been left, as is more likely to have happened if Zuffre had been an unyielding surface, as is not suggested.

Without making any criticism of the honesty of PW3, who did not see the incident, I am not persuaded that Nurazmi kicked Zuffre as the latter has suggested. There were, in any event, no injuries caused as a result.

The question of the award of aggravated and exemplary damages was considered in *Hon Ming Sung v. Tan Kwong Hui* [1994] JCBD 164, which took into account *Rookes v. Barnard* [1964] AC 1129, cited by counsel for the plaintiff.

The effect of *Rookes v. Barnard*, as I suggested in the *Hon* case, was that exemplary damages could be awarded in certain circumstances. Included in these was oppressive, arbitrary or unconstitutional acts by government servants.

As I have found, the injury to Zuffre was caused by an arbitrary and illegal act by a police officer, who is a government servant in Brunei.

There is also the possibility of awarding aggravated damages to the aggrieved plaintiff. This is a general right of the courts to award aggravated damages if there are circumstances which can properly be called aggravating.

I do not consider that such factors were present here, apart from the fact that Nurazmi maintained his version of events at all times and did not at any stage offer an apology to Zuffre.

The unfortunate outcome, and the rise of excessive force by Nurazmi, was due in part at least to the unjustified reaction of Zuffre to an attempted arrest.

I appreciate that, in most cases of the abuse of authority by a police officer, there should be an award of exemplary damages, to make it clear that a police officer must never go beyond what is a reasonable use of force in the circumstances.

However, I am satisfied that, although Nurazmi went beyond the permissible bounds of conduct, he was provoked by the actions of Zuffre.

On my findings, Nurazmi did the act in a manner which might otherwise have attracted exemplary damages. But, taking into account the degree of provocation which Nurazmi received, I do not think that there should be any award of exemplary damages - see *O'Connor v. Hewitson* [1979] Crim. LR 46.

I therefore award to the plaintiff -

(a) B$8,000 general damages for his injuries;

(b) special damages of B$30 to cover his t-shirt;

(c) costs, to be taxed if not agreed.